

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: January 10, 2008

TO: Honorable Council President Scott Peters

FROM: Michael J. Aguirre, City Attorney

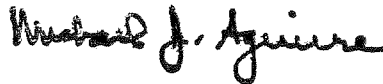
SUBJECT: San Diego City Pension System Reform

The Office of the San Diego City Attorney once again recommends changes to the City's Municipal Code in order to save city taxpayers from paying the explosive cost of certain employee pension benefits that were intended to be cost-neutral.

As you know, the combined cost to taxpayers of the Purchase of Service Credit (PSC) program and the Deferred Retirement Option Plan (DROP) is upwards of \$500 million.

To date, no action has been taken on these recommended changes to the Municipal Code. This memorandum renews our urgent request that these matters be docketed for consideration by the City Council.

Attached please find the Request for Council Action and the proposed ordinance language amending the municipal code that was provided to your office last September.



MJA:meb

Attachments

cc: Honorable Mayor and City Councilmembers
City Clerk

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO						1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)	
0: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY				3. DATE: 9/26/07	
SUBJECT: AMENDMENT TO SAN DIEGO MUNICIPAL CODE SECTION 24.1312 RELATING TO PURCHASE OF SERVICE CREDITS							
PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) VILLIAM GERSTEN X35876 MS59			6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) ALINA TAYLOR X36593 MS59			7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES							
UND					9. ADDITIONAL INFORMATION / ESTIMATED COST:		
EPT.							
RGANIZATION							
BJECT ACCOUNT							
OB ORDER							
J.P. NUMBER							
OUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT		9/24/07	8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY		9/24/07
4	CFO			11	ORIG. DEPT		9/24/07
5					DOCKET COORD: _____ COUNCIL LIAISON: _____		
6				✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION		
7					REFER TO: _____ COUNCIL DATE: _____		
11. PREPARATION OF: <input type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
AMENDING THE SAN DIEGO MUNICIPAL CODE TO REQUIRE ANY BENEFIT PAID FOR CREDITABLE SERVICE PURCHASED UNDER SECTION 24.1312 TO NOT EXCEED THE ACTUAL VALUE OF THE AMOUNT PAID FOR THE CREDITABLE SERVICE AND TO PRECLUDE USE OF ANY PURCHASED TIME TOWARDS THE VESTING DICTATES OF CHARTER SECTION 141.							
11A. STAFF RECOMMENDATIONS: AMEND THE MUNICIPAL CODE TO ADD SECTION 24.1312.2							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)							
COUNCIL DISTRICT(S): ALL							
COMMUNITY AREA(S): ALL							
ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA.							
HOUSING IMPACT: N/A							
OTHER ISSUES:							

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4,
DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY
ADDING SECTION 24.1312.2 AND 24.1312.3 RELATING TO
THE SAN DIEGO CITY EMPLOYEES' RETIREMENT
SYSTEM AND THE PURCHASE OF UNEARNED CREDIT.

WHEREAS, Section 141 of the San Diego City Charter requires a General Member of the San Diego City Employees' Retirement System [System] to complete 20 (twenty) years of service by age 55 or 10 (ten) years of service by age 62 in order to qualify for a service retirement and requires a Safety Member of the System to complete 10 (ten) years of service by age 55 or 20 (twenty) years of service by age 50 in order to qualify for a service retirement; and

WHEREAS, in 2002 San Diego voters rejected Proposition C which would have shortened the ten-year vesting requirement contained in Charter section 141 to five years; and

WHEREAS, in 2002 Ordinance No. 19126 was enacted to remove the prohibition against counting a purchase of Creditable Service set forth in San Diego Municipal Code section 24.1312 towards the ten-year vesting requirement set forth in section 141 of the San Diego City Charter such that the following language was removed from Municipal Code section 24.1312:
"Any Member employed by the City of San Diego on the date of December 31, 1996, may purchase up to a maximum of five (5) years of Credible Service in addition to any other purchase of Credible Service benefit for which that Member was eligible as of December 31, 1996. However, in no event shall the years purchased pursuant to this provision qualify to satisfy the ten year vesting requirements set forth in Section 141 of the San Diego City Charter."; and

WHEREAS, the enactment of Ordinance No. 19126 was in violation of the express language of City Charter section 141 and in violation of the express will of the voters who rejected Proposition C; and

WHEREAS, section 24.1312 of the San Diego Municipal Code allows a member to purchase up to 5 (five) years of unearned Creditable Service [PSC] based upon the full employer and employee cost of said service; and

WHEREAS, despite the years of service requirements of San Diego City Charter section 141, the PSC has been used for the purpose of satisfying the 10 and 20 years service requirements thereunder in contravention of the City Charter; and

WHEREAS, despite the terms of San Diego Municipal Code section 24.1312, applicable MOUs entered into by the City and the recognized employee organizations, as well as all historic pronouncements underlying the PSC, that any years purchased would be cost neutral, erroneous calculations have been made to the financial detriment of the Retirement System in the approximate amount of \$146 million dollars; and

WHEREAS, it is thus necessary to amend San Diego Municipal Code section 24.1312 to rectify the past and current usage and preclude future usage of PSC years towards the 10/20 year completion requirements of section 141 of the San Diego Charter; and

WHEREAS, it is thus necessary to amend San Diego Municipal Code section 24.1312 to rectify the past and current and preclude future erroneous calculations of the years purchased under the PSC program; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 4, of the San Diego Municipal Code is amended by adding Division 13, section 24.1312.2, to read as follows:

§24.1312.2 Actual Value for Creditable Service Purchased

Any benefit paid for creditable service purchased under section 24.1312 shall not exceed the actual value of the amount paid for the creditable service. The SDCERS actuary shall determine the number of years purchased by using the actual amount paid and applying appropriate and reasonable actuarial assumptions. The calculation of years purchased shall be made on an individual basis. In no event will the City be charged for creditable service exceeding the amount actually paid. This provision applies to all members of the SDCERS system, including those who have already retired. The determination of creditable service under this section shall be subject to review by the City's actuary. In case of any dispute the matter shall be subject to binding arbitration.

Section 2. That Chapter 2, Article 4, of the San Diego Municipal Code is amended by adding Division 13, section 24.1312.3, to read as follows:

§24.1312.3 Preclusion of Purchased Creditable Service for Vesting

Any purchased Creditable Service under this section shall not constitute paid years of service in satisfaction of the 10 (ten) years at 62 or 20 (twenty) years at 55 requirement of Section 141 of the San Diego City Charter nor Creditable years of service in satisfaction of the timing requirements of San Diego Municipal Code sections 24.1105(a)(1), 24.1106(a)(1), and 24.17.05.

Section 3. The City Attorney and Retirement System are directed to take all necessary actions to rectify the past erroneous calculations for those years previously purchased under the PSC program.


Section 4. It is the express intent of the City Council that any economic benefit, savings, or effect of this ordinance shall not be used directly or indirectly, to fund, support in any way, or ratify any employment or retirement benefit determined to be illegal by a court of law, or be construed to prevent further modification or rescission of any employment or retirement benefit.

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written copy having been available to the City Council and the public prior to the day of passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Michael J. Aguirre
City Attorney

MJA:amt
09/24/2007
09/26/2007 COR.COPY
Or.Dept:CityAtty
O-2008-20

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

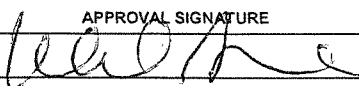
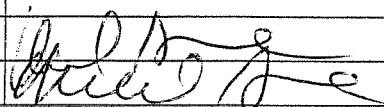
By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO						1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY)	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY				3. DATE: 9/24/07	
SUBJECT: AMENDMENT TO SAN DIEGO MUNICIPAL CODE SECTION 24.1402 RELATING TO DROP							
PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) VILLIAM GERSTEN X35876 MS59			6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) MARK BLAKE X35618 MS59			7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES							
UND					9. ADDITIONAL INFORMATION / ESTIMATED COST:		
EPT.							
RGANIZATION							
BJECT ACCOUNT							
OB ORDER							
I.P. NUMBER							
MOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT			8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY		
4	CFO			11	ORIG. DEPT		
5				DOCKET COORD: _____ COUNCIL LIAISON _____			
6				✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION		
7					<input type="checkbox"/> REFER TO: _____ COUNCIL DATE: _____		
11. PREPARATION OF: <input type="checkbox"/> RESOLUTIONS <input checked="" type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
AMENDING THE SAN DIEGO MUNICIPAL CODE TO REQUIRE ANY BENEFIT PAID UNDER THE DROP PROGRAM TO BE ADMINISTERED ON A COST NEUTRAL BASIS TO THE CITY.							
11A. STAFF RECOMMENDATIONS: AMEND THE MUNICIPAL CODE TO ADD SECTION 24.1402.2							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.) COUNCIL DISTRICT(S): ALL COMMUNITY AREA(S): ALL ENVIRONMENTAL IMPACT: THIS ACTION IS NOT A "PROJECT" FOR PURPOSES OF CEQA. HOUSING IMPACT: N/A OTHER ISSUES:							

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 4,
DIVISION 14 OF THE SAN DIEGO MUNICIPAL CODE BY
ADDING SECTION 24.1402.2 RELATING TO DROP
BENEFITS AND PARTICIPATION ACCOUNTS.

WHEREAS, it was the intent of the City to institute the Deferred Retirement Option Plan [DROP] on a cost-neutral basis and initially on a three-year test basis; and

WHEREAS, following the three-year test basis, the City continued DROP based on the belief that the program was cost-neutral; and

WHEREAS, DROP is not cost-neutral to the City and never has been since its inception; and

WHEREAS, San Diego Municipal Code section 24.1402 must therefore be amended to ensure the cost-neutrality fundamental to the creation and maintenance of DROP; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 4, Division 14, of the San Diego Municipal Code is amended by adding Section 24.1402.2 to read as follows:

§ 24.1402.2 Benefits to be Cost Neutral

Any benefit paid under the DROP program shall be administered on a cost neutral basis to the City. The SDCERS actuary shall determine the manner in which the DROP program can be administered so that it functions on a cost neutral basis to the City. In no event will the City be charged for DROP costs exceeding the amount required to keep the DROP program cost neutral to the City. This provision applies to all members of the

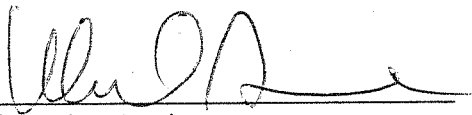
SDCERS system, including those who have already retired. The determination of DROP benefits under this section shall be subject to review by the City's actuary. In case of any dispute the matter shall be subject to binding arbitration.

Section 2. It is the express intent of the City Council that any economic benefit, savings, or effect of this ordinance shall not be used directly or indirectly, to fund, support in any way, or ratify any employment or retirement benefit determined to be illegal by a court of law, or be construed to prevent further modification or rescission of any employment or retirement benefit.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Michael J. Aguirre
City Attorney

MJA:amt
09/24/2007
Or.Dept:CityAtty
O-2008-22

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor